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IRETAIRBY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IRETAIRBY,

Plaintiff,

vs.

BROOKS HENDERSON HADEN,

Defendant.

Case No.: 3:08C-80004 MISC-PJH

**IRETAIRBY'S OPPOSITION TO *EX*
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

Hearing Date: March 31, 2008
Time: 9:00 a.m.
Dept.: 3
Judge: Phyllis J. Hamilton

Ireta Irby opposes the ex parte application for a temporary restraining order:

I.

INTRODUCTION

Ireta Irby is seeking to recover under a judgment for \$87,450.00 entered in the United States District Court for the District of Texas against Brooks Henderson Haden almost twenty years ago and under which he has never paid a dime. Mr. Henderson acknowledges that the Texas judgment is still enforceable against him but insists that he should not have to pay for it herein in California.

Because the judgment is still enforceable in the District of Texas where it originated, this district must also allow enforcement of the judgment under 28 U.S.C. § 1963. *See Gagan v. Sharar*, 376 F.3d 987, 989, fn 3 (9th Cir. 2004).

1 **II.**

2 **STATEMENT OF FACTS**

3 The statement of facts cited by Henderson is accurate as far as they go. It by adds the
4 following facts:

5 The judgment originally entered in the United States District Court for the District of
6 Texas was revived twice. Texas law allows for the revival of a judgment simply by the issuance
7 of a new writ of possession within a 10 year period .

8 It by has now revived the judgment in Texas three times. The first was on September 24,
9 1996; the second was on February 25, 1998; and most recently on February 12, 2008. The Texas
10 District Court recognized that the judgment was still valid and enforceable when it issued a
11 Certification of Judgment for Registration in Another District on January 10, 2008.

12 **III.**

13 **GROUND FOR DENYING THE EX PARTE APPLICATION**

14 **A. Henderson has not met the burden required to obtain injunctive relief.**

15 A party seeking injunctive relief in a federal court must show that it has met the standards
16 for obtaining injunctive relief in the state where the federal court is sited. Fed. Rules of Civ. Proc.
17 64 and 65. The California Code of Civil Procedure sections 511.010 through 516.050, provide
18 the standards in California. Section 513.010 provides that the court may issue a temporary
19 restraining order to protect the creditor's position pending a noticed claim and delivery hearing if
20 the following are found:

- 21 • The plaintiff establishes the probable validity of his claim to possession of the
- 22 properties;
- 23 • Plaintiff provides an undertaking or bond;
- 24 • The plaintiff establishes the probability that there is an immediate danger that the
- 25 property claimed may become unavailable to levy by reason of being transferred,
- 26 concealed, or removed or may become substantially impaired in value. CCP
- 27 § 513.010(b).

1 Irby asserts that Henderson cannot meet these standards. First, he cannot establish the
 2 probability of success of his opposition for the reasons stated below. There is a valid and
 3 enforceable judgment in Texas which must remain valid and enforceable throughout all the
 4 district courts in the United States.

5 Second, Henderson has not offered any bond or undertaking. He currently owes Irby over
 6 \$392,568.01. If the court grants an injunction, then Henderson should be required to post an
 7 undertaking in the amount of the debt.

8 **B. The Texas judgment is enforceable.**

9 Henderson is correct in his statement of the law that at the federal courts are to apply the law
 10 of the state to determine whether a judgment remains enforceable or has expired. (Fed. Rules
 11 Civil Pro. 69).

12 Texas law allows a judgment to be revived by the reissuance of a writ of possession
 13 once every ten years.

14 §34.001. NO EXECUTION ON DORMANT JUDGMENT. (a) If a writ of
 15 execution is not issued within 10 years after the rendition of a judgment of a court
 16 of record or a justice court, the judgment is dormant and execution may not be
 issued on the judgment unless it is revived.

17 (b) If a writ of execution is issued within 10 years after
 18 rendition of a judgment but a second writ is not issued within 10 years after
 19 issuance of the first writ, the judgment becomes dormant. A second writ may be
 issued at any time within 10 years after issuance of the first writ.

20 Acts 1985, 69th Leg., ch. 959, §1, eff. Sept. 1, 1985.

21 Henderson does not dispute that Irby has a validly enforceable judgment in Texas District
 22 Court. (See Memorandum of Points and Authorities 1:4-8). This admission is fatal to his
 23 application for a temporary restraining order.

24 **C. The judgment registered in the Northern District of California has the same
 25 effect as the judgment of the Texas District Court and been forced in like
 manner.**

26 Except where enforcement is stayed, a final judgment for the recovery of money or
 27 property entered outside California in any federal circuit court of appeals, district court or
 28 bankruptcy court, or in the Court of International Trade, may be enforced in California by

1 registering it in a federal district in California. 28 U.S.C. § 1963; *Gagan v. Sharar*, 376 F.3d 987,
 2 989, fn. 3 (9th Cir. 2004). Once properly registered, the judgment has the “same effect as a
 3 judgment of the district court of the district where registered and may be enforced in like
 4 manner.” *Id.*

5 Because the judgment is enforceable in Texas District Court, it can be registered in a
 6 district in California as an enforceable judgment. The holding of *Marx v. Go Publishing*
 7 *Company*, 721 F.2d 1272 (9th Cir. 1983), as cited by Henderson, supports this conclusion.
 8 Henderson correctly states: “We discern no reason why the statute of limitations rule of the state
 9 should not apply to the federal proceeding. There is no registration of the district court judgment under
 10 28 U.S.C. § 1963, the judgment (read the Texas judgment) not then being time barred, Cal. Code
 11 Civ. Proc. § 337.5, commenced anew with the running of the applicable statute, which is Cal. Code
 12 Civ. Proc. § 681.”

13 The Texas judgment is valid and enforceable under 28 U.S.C. § 1963.

14 Henderson’s reliance on *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745 (1993) is
 15 distinguishable. In *Barkley* no valid judgments survived. The court held that the plaintiff could
 16 not create an enforceable judgment by renewing the lawsuit, because there was no judgment left
 17 to enforce. That is not the case here. The Texas federal judgment is still lawful and enforceable.
 18 A citizen cannot escape the consequences of a authorized form of executions simply because of
 19 the forum he chose to live in.

22 DATED: March 28, 2008

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 RHONDAL NELSON

26 Attorneys for Plaintiff
 IRETAIRBY